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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ELEANOR TEDONE,

Plaintiff(s), : 07 Civ. 4111 (WP4) (MDF)  
-against- :  
H.J. HEINZ COMPANY, ET AL.,

Defendant(s).-----X

PLAINTIFF'S EXPERT WITNESS DISCLOSURE

SIRS:

PLEASE TAKE NOTICE, that plaintiff, by her attorneys, Jasne & Florio LLP, and pursuant to the Federal Rules of Civil Procedure hereby sets forth the following Expert Witness disclosure:

1. Plaintiff intends to call Steve Lerman of SIL Consulting, Inc. as an expert witness.
2. Expert witness is located at 3 Allen Gate, Plainview, NY 11803-6112 Telephone # (516) 433-3412.
3. Attached hereto is expert witness *curriculum vitae*.
4. Attached hereto is a document containing expert witness opinion.
5. Expert witness may introduce the following exhibits at trial:

- a. The bottle in question.
- b. Photographs from inspection of the bottle.
- c. The expert witness report.
- d. An intact bottle of the same type as the bottle in question.

6. Publications by the expert witness is contained within the attached *curriculum vitae*.
7. Expert witness has testified in the following cases in the past 4 years:
  - a. Brown v. S.N.E, Holding Corp., Bronx County N.Y. Index# 17080/94
8. Expert witness rate of compensation is \$230.00 per/hr for research and \$290.00 per/hr for appearances and is not contingent nor related to the case outcome.

Dated: White Plains, New York

April 14, 2008



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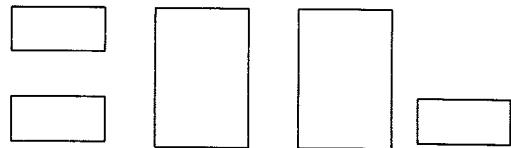
To: CAMACHO MAURO MULHOLLAND, LLP  
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(914) 798-5400

**S I L C O N S U L T I N G , I N C .**

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**PRIVILEGED AND CONFIDENTIAL**

**DATE:** April 11, 2008

**TO:** Hugh Jasne, Attorney for Plaintiff

**CASE:** Tedone vs. Heinz

**RE:** Broken Catsup Bottle

**PURPOSE:** To Explain Various Technical Issues as they Relate to this Case

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**BACKGROUND**

The Plaintiff alleges that she sustained serious and severe lacerations to the hand as a result of a Heinz Catsup bottle shattering in her hand as she was trying to open it.

Mr. Hugh Jasne retained SIL Consulting, Inc., to assist in explaining and clarifying various technical issues regarding this case, specifically to determine the reason the bottle shattered as alleged.

**REVIEW OF FACTS**

Mr. Steve Lerman of SIL reviewed various records and information including photographs pertaining to the case, supplied by Mr. Jasne. He also examined the fragments of the bottle in question, as well as an unbroken bottle of the same type, which took place in the office of the Defendant's attorney on December 21, 2007

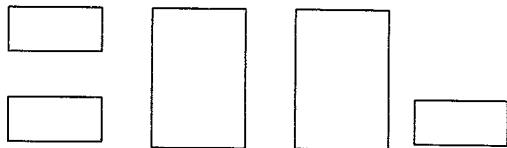
**TECHNICAL DISCUSSION**

The following technical points will assist in understanding the issues in this case:

- When glass breaks, the resulting fragments often indicate information about the break, e.g., massive impact, local impact, stress breakage, micro-cracking.

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- When glass is chipped or cracked, it will lead to breakage similar to that of impact breakage; the cracking pattern will trace back to the chip/break.
- When glass breaks on impact, it forms a large number of fragments. These fragments are irregular and jagged in shape, and will exhibit irregular ridges on either side of the edge, which may indicate the direction of breakage.
- Stress breakage occurs when the glass was not properly annealed, causing the glass to be under stress along the stress area (not unlike a fault in the earth leading up to an earthquake).
- This type of breakage has three (3) distinct features:
  - Very smooth breakage along the stress area.
  - Smooth, non-irregular, fragments.
  - Little or no fragmentation in the stressed area. Other areas of the artifact may fragment to a greater degree.
- Stress breakage can be initiated with much smaller force than would normally be required to break the glass.
- Glass as thick as the catsup bottle in question (2.5 mm) can withstand a force of 2,000 lb (1 ton).

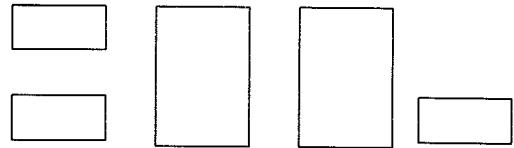
**FINDINGS IN THIS CASE**

Based on the facts of the case as presented to SIL, we offer the following comments and observations:

- The bottle in question was a small, personal size, catsup bottle, 76 mm tall, 29 mm wide at the top, and 44 mm wide at the base.
- The upper and lower portions of the broken bottle were intact. The cap was still on the upper portion.
- The upper and lower fragments exhibited properties as described above for stress breakage.

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- The Plaintiff applied axial torque to the bottle, which is how torque is applied to remove a bottle cap. Enormous torque would have had to have been applied to break a properly manufactured bottle with no defects. The small size of the bottle furthers the difficulty of applying any force of significant magnitude.
- The cap was still on the bottle, indicating that there wasn't even enough force applied to remove the cap.
- The fracture most likely initiated at the neck of the bottle, since a) stress is usually circumferential, b) there is a higher amount of fragmentation in the middle of the bottle, and c) the bottom fragment is too narrow to have been gripped by the Plaintiff.

**CONCLUSIONS**

Based on the facts reviewed in this case and our technical knowledge of refractory material science, SIL concludes the following:

- The catsup bottle in question broke because of stress in the area of breakage around the upper portion of the bottle.
- This stress was induced by improper manufacturing, either improper annealing or an equivalent improper practice that either caused the stress, or, more likely, did not relieve the stress.

**CLOSING**

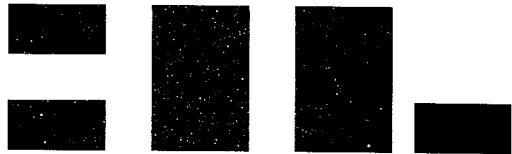
This completes our initial review and discussion of the technical facts of this case. Please advise us if you have any questions or if you need any additional information.

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Steven I. Lerman, M.S., Consulting Chemist  
 SIL Consulting, Inc.

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**TECHNICAL AND MANAGEMENT CONSULTING**

Over 35 years experience in all phases of Quality Management, Industrial Operations, Laboratory Testing and Analysis, and Environmental Health and Safety.

- Laboratory Assessments
- IH Programs
- Automation & LIMS
- QA/QC Programs
- Conformity Assessment
- Quality Management Systems
- Instrumentation
- Environmental Review
- Materials Testing
- Health & Safety
- Expert Testimony
- Process Chemistry

**PROFESSIONAL ACTIVITIES AND AWARDS**

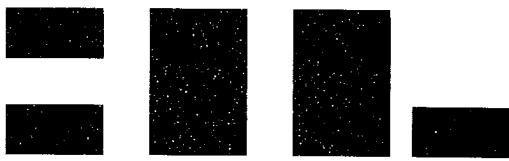
- Quality Systems Auditor under ISO 9000 and ISO/IEC 17025 (RAB #Q02199)
- NIST-NVLAP, A2LA, AIHA, IAS, and API Laboratory Assessor for Laboratory Accreditation Programs
- Past Chairman, ASTM Subcommittee D19.11, Industrial Water
- Fellow, American Institute of Chemists
- Technical Consultant to US Dep't of Commerce, NIST-NVLAP
- Technical Consultant to the Electric Power Research Institute (EPRI)
- Who's Who in the East, 1979
- ASTM Outstanding Service Award, 1988
- ACS Congressional Science Counselor and Short-Course Reviewer
- HUD/OSHA Lead Inspector
- Instructor, Analytical Chemistry and Instrumentation Seminar sponsored by Tall Oaks Publishing
- New York City/State Approved Industrial Hygienist
- Director, NIOSH 582-Equivalent Course given by Senagryph Training Center

**EDUCATION**

- M.S., Chemistry, 1972, Adelphi University
- B.A., Chemistry, 1965, Queens College, CUNY

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**TECHNICAL PUBLICATIONS AND PRESENTATIONS**

**COMPUTERIZED CALCULATIONS OF EMISSION SPECTROGRAPHIC ANALYSIS RESULTS**

Delivered at the 2nd Annual FACSS Convention, 1975

**CONTINUOUS MONITORING OF POWER PLANT PROCESS WATER**

Delivered At the 39th Annual Meeting of the International Water Conference, 1978

**ANALYSIS OF PROCESS WATER BY ION CHROMATOGRAPHY**

Delivered at the 40th Annual Meeting of the International Water Conference, 1979

**DETERMINATION OF PCBs IN TRANSFORMER OIL**

Delivered at the 32nd Annual Meeting of the Pittsburgh Conference, 1981

Published in American Laboratory, February, 1982

**ION CHROMATOGRAPHY USING NON-ISOCRATIC ELUTION**

Delivered at the 33rd Annual Meeting of the Pittsburgh Conference, 1982

**PERSPECTIVES IN ION CHROMATOGRAPHY**

Delivered at the Annual Meeting of the North Jersey Chromatography Discussion Group, 1982 (invited speaker)

**STANDARDS FOR INDUSTRIAL WATER**

Published in Standardization News, October, 1983

**STATISTICS IN THE LABORATORY**

Delivered at the 35th Annual Meeting of the Pittsburgh Conference, 1984

**ASTM POWER PLANT MANUAL**

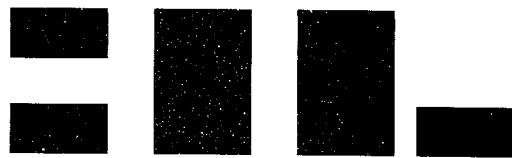
Delivered at the 46th Annual Meeting of the International Water Conference, 1985

**THE CHEMISTRY OF HIGH PURITY WATER**

Published in UltraPure Water, October, 1988

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**TECHNICAL PUBLICATIONS AND PRESENTATIONS**

**PERSPECTIVES ON MONITORING FOR TOTAL AND COLLOIDAL SILICA**

Delivered at the Second EPRI Conference on Cycle Chemistry in Fossil Plants, 1988

Published in UltraPure Water, December, 1988

**IMPACT AND PAYBACK OF A QA/QC PROGRAM FOR STEAM-WATER CHEMISTRY**

Delivered at the EPRI Conference on Measuring Waterborne Trace Substances, 1990

Published in UltraPure Water, November, 1990

**MANAGING GC/MS QC DATA**

Delivered at the 43rd Annual Meeting of the Pittsburgh Conference, 1992

**ALTERNATIVE AND NON-TRADITIONAL TECHNIQUES FOR ANALYSIS OF AIR AND BULK SAMPLES**

Delivered at the EPRI/NAC Conference on Asbestos Control and Replacement for Electric Utilities, April, 1992

**HIGH PURITY AND PROCESS WATER**

Published in Standardization News, April, 1992

**ENVIRONMENTAL QC DATA MANAGEMENT**

Delivered at the 44th Annual Meeting of the Pittsburgh Conference, 1993

**STATISTICAL QUALITY CONTROL TECHNIQUES FOR DUPLICATE QC DATA**

Published in The Synergist, October, 1997

**ASTM Standards for High Purity Water**

Delivered at UltraPure Water EXPO 2000, April, 2000